



# Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY  
DOCKET NO. 682

IN THE MATTER  
OF  
DAVID F. McCARTHY

## DISPOSITION AGREEMENT

The State Ethics Commission and David F. McCarthy enter into this Disposition Agreement pursuant to Section 5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, ' 4(j).

On June 25, 2002, the Commission initiated, pursuant to G.L. c. 268B, ' 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by McCarthy. The Commission has concluded its inquiry and, on April 16, 2002, found reasonable cause to believe that McCarthy violated G.L. c. 268A, ' 19.

The Commission and McCarthy now agree to the following findings of fact and conclusions of law:

### Findings of Facts

1. McCarthy is the Town of Greenfield police chief. As such, he is a municipal employee as that term is defined in G.L. c. 268A, ' 1.
2. Scott Daniel McCarthy, one of the Chief's sons, has been a Greenfield police officer since July 1, 1992.
3. In Greenfield the chief recommends and the selectmen appoint all new hires and promotions.
4. Beginning in March 1999, Daniel was one of five Greenfield patrol officers who were on the civil service list for any sergeant vacancy that would occur in the department. Daniel's score placed him second on the list, although he was slightly more senior in service in the department than the other four. The list was set to expire in or about October 17, 2000.
5. Chief McCarthy knew, from previous advice he had received from the State Ethics Commission (see below) that because his son was a candidate for a sergeant's promotion, he as Chief would not be able to participate in filling any sergeant

vacancy. Instead, that process would be turned over to his deputy. Nevertheless, in late 1999, Chief McCarthy spoke with Lt. Martin Carter – one of the two lieutenants under the then deputy chief – and asked whether Carter would consider supporting Daniel being promoted to sergeant when a vacancy occurred. Lt. Carter stated that he would not.

6. The Deputy Chief abruptly retired in late July 2000. Shortly thereafter, Chief McCarthy decided to recommend a department reorganization, which would include various promotions, including promoting a sergeant to lieutenant, thereby creating a sergeant vacancy, and adding two new sergeant positions. Any such reorganization had to be approved by the selectmen.

7. Aware that the Chief's son was on the sergeant's list and that the deputy chief's resignation would result in a sergeant vacancy, the town manager in late July or early August 2000, asked Lt. David Guilbault to decide on whom to recommend to fill the sergeant positions.

8. In or about early to mid-August 2000, Lt. Guilbault asked all sergeants and lieutenants for their recommendations as to whom should be appointed to sergeant.

9. At about the same time, Chief McCarthy asked Sgt. Viorel Bobe to accompany him on a ride. During the course of the ride the Chief told Sgt. Bobe that he had heard that Bobe was not supporting making Daniel a sergeant. The Chief asked Bobe to be fair regarding Daniel, noting that others had opposed Bobe's promotion to sergeant, and that the Chief had promoted Bobe despite that opposition.

10. In an August 16, 2000 memo to the selectmen, Chief McCarthy laid out his formal recommendations for the reorganization. In that memo he recommended that the selectmen add two new sergeants in addition to filling the sergeant vacancy, and he noted that the civil service sergeants list was set to expire within a month, and another list would not be created for at least a year.

11. In an August 22, 2000 memo from Chief McCarthy to Selectmen Chairman John Mackin, the Chief recommended that Lt. Guilbault be promoted to captain and a sergeant be promoted to lieutenant. The memo then states, "Lt. David Guilbault will make the presentation for the sergeant recommendations."

12. Just prior to the August 22, 2000 board of selectmen meeting, Chief McCarthy approached a selectman at his place of employment and asked him not to oppose the promotions. The selectman had asked the Chief to delay the promotions so that the process could be reviewed and a more public process implemented given that the Chief's son was one of the sergeant candidates, but the Chief refused, stating that the sergeants list was set to expire. The Chief again asked the selectman to support the appointments, and instead offered at some later time to review the manner in which future promotions would occur.

13. At the August 22, 2000 Selectmen's meeting, Lt. Guilbault recommended to the selectmen that three of the patrolmen who were on the sergeants' list, including Daniel McCarthy, be promoted to sergeant positions.

14. At their August 22, 2000 meeting the selectmen approved the reorganization and made the recommended appointments/promotions.

15. As a result of his promotion to sergeant, Daniel's salary increased from \$667.80 to \$739.20 per week.

16. In August 2001, one of the newly appointed sergeants filed a grievance regarding the pay rate for the new sergeants. The Chief participated in denying the grievance by meeting with department personnel and formulating an offer to instead pay each sergeant a one time, lump sum amount of \$439. The sergeants rejected the offer, and the matter was eventually decided by an arbitrator.

#### *Conclusions of Law*

17. Section 19 of G.L. c. 268A prohibits a municipal employee from participating<sup>1</sup> as such an employee in a particular matter<sup>2</sup> in which, to his knowledge, he or an immediate family member<sup>3</sup> has a financial interest.<sup>4</sup>

18. The decisions to reorganize the department, including promoting a sergeant to lieutenant thereby creating a sergeant vacancy and adding two additional sergeant positions, and to lobby officers behind the scenes to support his son's promotion, were particular matters. In addition, the decisions to deny the grievance over that pay rate and to offer \$439 to each sergeant, were each particular matters.

19. Chief McCarthy participated in each of those particular matters as is described above.

20. As Chief McCarthy's son, Daniel is a member of the Chief's immediate family.

21. Daniel had a financial interest in each of the above particular matters because each would likely affect his salary.

22. Accordingly, by participating in each of the foregoing particular matters concerning his son, Chief McCarthy violated § 19.

#### *Prior Notice*

23. In 1992, town counsel provided Chief McCarthy with a written opinion regarding how § 19 would apply to the Chief's conduct vis-à-vis his son as a police officer in his department. The letter explained that §19 prohibited the Chief from participating as such in any particular matter involving his son's financial interests.

24. By letter dated August 28, 1997, the Commission's Legal Division responded to Chief McCarthy's request for advice regarding appointing his son as a K-9 officer. Because the Chief's request referred to past conduct, the letter gave only general advice, but in considerable detail, as to §19 prohibiting the Chief from participating as such in any particular matter involving his son's financial interest.

25. By letter dated December 2, 1997, the Commission's Enforcement Division warned Chief McCarthy that his involving himself in a personnel decision in which his son had a financial interest, a K-9 officer appointment, appeared to violate '19.

### *Resolution*

In view of the foregoing violations of G.L. c. 268A by McCarthy, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Chief McCarthy:

- (a) that McCarthy pay to the Commission the sum of \$4000 as a civil penalty for violating G.L. c. 268A, '19; and
- (b) that McCarthy waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

**DATE:** May 28, 2003

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<sup>1</sup> AParticipate@ means to participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, '1(j).

<sup>2</sup> AParticular matter@ means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, '1(k).

<sup>3</sup> AImmediate family@ means the employee and his spouse, and their parents, children, brothers and sisters. G.L. c. 268A, '1(e).

<sup>4</sup> AFinancial interest@ means any economic interest of a particular individual that is not shared with a substantial segment of the population of the municipality. See *Graham v. McGrail*, 370 Mass. 133 (1976). This definition has embraced private interests, no matter how small, which are direct, immediate or reasonably foreseeable. See *EC-COI-84-98*. The interest can be affected in either a positive or negative way. *EC-COI-84-96*.